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Federal Communications Commission

DA 04-3169

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Reclassification of License	)	
of FM Station KCYY, San Antonio, Texas	)	RM-11028
Station KELZ-FM, Terrell Hills, Texas	)	
FM Station KBPA, San Marcos, Texas	)	

**ORDER TO SHOW CAUSE**

**Adopted: October 6, 2004**

**Released: October 8, 2004**

**Comment Date: November 22, 2004**

By the Assistant Chief, Audio Division:

1. Before the Audio Division is a Petition for Rule Making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 291A at Center Point, Texas, as its first local service. To accommodate this allotment, Petitioner requests the substitution of Channel 243C3 for vacant Channel 291A at Kerrville, Texas; substitution of Channel 260A for vacant Channel 243A at Ingram, Texas; substitution of Channel 279A for vacant Channel 260A at Hunt; and the reclassification of FM Station KCYY, Channel 262C, San Antonio, Texas, Station KELZ-FM, Channel 294C, Terrell Hills, Texas and FM Station KBPA, Channel 278C, San Marcos, Texas, to specify operation as C0 facilities.

2. FM Station KCYY currently operates on Channel 262C with effective radiated power ("ERP") of 98 kilowatts at 300 meters height above average terrain ("HAAT"). Station KELZ-FM currently operates on Channel 294C with an ERP of 100 kilowatts at 310 meters HAAT. FM Station KBPA currently operates on Channel 278C with an ERP of 100 kilowatts at 383 meters HAAT. In this case, FM Station KCYY is subject to reclassification as a C0 facility since it is operating below the minimum ERP of 100 kilowatts and the minimum Class C antenna height requirements of at least 451 meters HAAT, whereas, Station KELZ-FM and FM Station KBPA are both subject to reclassification as Class C0 facilities because they are operating below the minimum Class C antenna height requirements of at least 451 meters HAAT.<sup>1</sup>

3. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.<sup>2</sup> Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.<sup>3</sup> In this instance, Class C0 reclassifications for FM Station KCYY, Station KELZ-

<sup>1</sup> See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21,649 (2000) ("Second Report and Order"), and 47 C.F.R. §§ 1.420(g), n. 2, and 73.3573, n. 4.

<sup>2</sup> 47 U.S.C. § 316(a).

<sup>3</sup> See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act, 2 FCC Rcd

FM and FM Station KBPA would accommodate the Petitioner's request to allot Channel 291A to Center Point, as its first local service. Therefore, the Petitioner's request has sufficient public interest benefits and justifies the issuance of an order to show cause.

4. The reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments.<sup>4</sup> In instances where an initiating petition proposes amending the FM Table of Allotments in addition to the proposed reclassification of a Class C FM station, the Commission must issue an order to show cause as set forth in Section 73.3573, note 4, of the Commission's rules. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has been resolved.

5. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.<sup>5</sup> Petitioner has submitted such certification. Therefore, in order to comply with the Commission's Class C0 reclassification procedures, we must issue this *Order to Show Cause* directed to CXR Holdings, Inc. ("CXR Holdings"), licensee of FM Station KCYX at San Antonio and Station KELZ-FM at Terrell Hills; and Emmis Austin Radio Broadcasting Company, L.P. ("Emmis Austin"), licensee of FM Station KBPA at San Marcos. As a result, CXR Holdings is required to show cause why its license for Station KCYX should not be modified to specify operation on Channel 262C0 in lieu of Channel 262C at San Antonio; and why its license for Station KELZ-FM should not be modified to specify operation on Channel 294C0 instead of Channel 294C at Terrell Hills. Moreover, Emmis Austin is also required to show cause why its license for FM Station KBPA should not be modified to specify operation on Channel 278C0 in lieu of Channel 278C at San Marcos.

6. The license for FM Station KCYX (File No. BMLH-20000101ACO) at San Antonio, Texas, can be modified to Channel 262C0 at its current authorized transmitter site located at coordinates 29-31-25 NL and 98-43-25 WL. The license for Station KELZ-FM (File No. BLH-19850508KY) at Terrell Hills, Texas, can also be modified to Channel 294C0 at its current authorized transmitter site located at coordinates 29-11-03 NL and 98-30-49 WL. Moreover, the license for FM Station KBPA (File No. BLH-19880113KA) at San Marcos, Texas, can be modified to Channel 278C0 at its current authorized transmitter site located at coordinates 30-02-42 NL and 97-52-50 WL.

7. Pursuant to Section 1.87 of the Commission's rules, CXR Holdings and Emmis Austin, no later than November 22, 2004, may file a written statement showing with particularity why its respective licenses should not be modified as proposed in this *Order to Show Cause*. The Commission may call on CXR Holdings and Emmis Austin to furnish additional information. If CXR Holdings or Emmis Austin raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for

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3327 (1987).

<sup>4</sup> *Second Report and Order*, *supra*, and 47 C.F.R. § 1.420, n.2.

<sup>5</sup> See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

hearing. If no written statement is filed by the date referred to above, CXR Holdings and Emmis Austin will be deemed to have consented to the modifications as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modifications are found to be in the public interest.

8. If CXR Holdings and Emmis Austin chooses to seek authority to modify its respective facilities, an acceptable application for a construction permit to increase the antenna height to at least 451 meters HAAT for their respective stations must be filed with the Commission within 180 days subsequent to the show cause response due date (November 22, 2004). Upon the filing of an acceptable construction permit application, the proposal to allot Channel 291A at Center Point, will be dismissed. The present three-year construction period will be applicable if a construction permit is obtained by CXR Holdings or Emmis Austin, as specified herein, under this procedure. If the construction is not completed as authorized, FM Station KCYY, Station KELZ-FM and FM Station KBPA are subject to reclassification automatically as Class C0 stations, and, in that event, a new petition for rule making to allot Channel 291A at Center Point, may be refiled.

9. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL Send a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following licensee and its counsel:

CXR Holdings, Inc  
Licensee of FM Station KCYY and KELZ-FM  
Attention: Richard F. Klumpp  
3993 Howard Hughes Parkway, Suite 250  
Las Vegas, Nevada 89109

Emmis Austin Radio Broadcasting Company, L.P.  
Licensee of Station KBPA  
Attention: J. Scott Enright, Vice President & Secretary  
One Emmis Plaza  
40 Monument Circle, Suite 700  
Indianapolis, Indiana 46204

10. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau**